

AMENDED IN SENATE MARCH 8, 2012

SENATE BILL

No. 965

Introduced by Senator Wright
(Coauthor: Senator Blakeslee)

January 11, 2012

An act to ~~amend Sections 13263, 13269, and 13377 of~~ *add Section 13293* to the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 965, as amended, Wright. State Water Resources Control Board and California regional water quality control boards: ~~Administrative Procedure Act.~~ *ex parte communications.*

Existing law establishes the State Water Resources Control Board and the California regional water quality control boards and authorizes them to adopt regulations to carry out their powers and duties and to conduct administrative adjudicative proceedings. The Administrative Procedure Act establishes the conduct of administrative adjudicative proceedings, which are defined as evidentiary hearings for determination of facts pursuant to which a state agency formulates and issues a decision. Existing law defines a decision as an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person.

This bill would ~~establish that the issuance, denial, or revocation of certain waste discharge requirements, permits, or waivers by the State Water Resources Control Board and the California regional water quality boards that apply statewide, regionwide, or industrywide, and not to a person, as defined, are not within the meaning of a decision, as defined under the Administrative Procedure Act.~~ *prohibit a state board, regional board member, or a person, other than a board staff member acting in*

his or her official capacity, who intends to influence the decision of a board member on a matter before the board, from conducting an ex parte communication, as defined. This bill would provide that if an ex parte communication occurs, the board member shall notify the interested party that a full disclosure of the ex parte communication shall be entered in the board's record. This bill would also provide that certain communications cease to be ex parte communications, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13293 is added to the Water Code, to
2 read:
3 13293. (a) For the purposes of this section:
4 (1) "Ex parte communication" means an oral or written
5 communication concerning matters, other than purely procedural
6 matters, under the jurisdiction of the state board or a regional
7 board, pursuant to Article 4 (commencing with Section 13260) or
8 Chapter 5.5 (commencing with Section 13370).
9 (2) "Board" refers to both the State Water Resources Control
10 Board and the Regional Quality Control Boards.
11 (b) A board member, or a person, other than a board staff
12 member acting in his or her official capacity, who intends to
13 influence the decision of a board member on a matter before the
14 board, shall not conduct an ex parte communication, except as
15 follows:
16 (1) If an ex parte communication occurs, the board member
17 shall notify the interested party that a full disclosure of the ex parte
18 communication shall be entered in the board's record.
19 (2) Communications cease to be ex parte communications when
20 either of the following occurs:
21 (A) The board member or the person who engaged in the
22 communication with the board member fully discloses the
23 communication and requests in writing that the communication
24 be placed in the board's official record of the proceeding.
25 (B) Two or more board members receive substantially the same
26 written communication, or are party to the same oral
27 communication, from the same party on the same matter, and a

single board member fully discloses the communication on behalf of the other board member or members who received the communication and requests in writing that it be placed in the board's official record of the proceeding.

(c) Notwithstanding Section 11425.10 of the Government Code, the ex parte communications provisions of the Administrative Procedure Act (Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) do not apply to proceedings of the state board or a regional water quality control board to which this section applies.

SECTION 1. Section 13263 of the Water Code is amended to read:

~~13263. (a) The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. The requirements shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.~~

~~(b) A regional board, in prescribing requirements, need not authorize the utilization of the full waste assimilation capacities of the receiving waters.~~

~~(c) The requirements may contain a time schedule, subject to revision in the discretion of the board.~~

~~(d) The regional board may prescribe requirements although no discharge report has been filed.~~

~~(e) Upon application by any affected person, or on its own motion, the regional board may review and revise requirements. All requirements shall be reviewed periodically.~~

~~(f) The regional board shall notify in writing the person making or proposing the discharge or the change therein of the discharge requirements to be met. After receipt of the notice, the person so notified shall provide adequate means to meet the requirements.~~

~~(g) No discharge of waste into the waters of the state, whether or not the discharge is made pursuant to waste discharge~~

1 requirements, shall create a vested right to continue the discharge.
2 All discharges of waste into waters of the state are privileges, not
3 rights.

4 (h) The regional board may incorporate the requirements
5 prescribed pursuant to this section into a master recycling permit
6 for either a supplier or distributor, or both, of recycled water.

7 (i) The state board or a regional board may prescribe general
8 waste discharge requirements for a category of discharges if the
9 state board or that regional board finds or determines that all of
10 the following criteria apply to the discharges in that category:

11 (1) The discharges are produced by the same or similar
12 operations.

13 (2) The discharges involve the same or similar types of waste.

14 (3) The discharges require the same or similar treatment
15 standards.

16 (4) The discharges are more appropriately regulated under
17 general discharge requirements than individual discharge
18 requirements.

19 (j) The state board, after any necessary hearing, may prescribe
20 waste discharge requirements in accordance with this section.

21 (k) The issuance, denial, or revocation of waste discharge
22 requirements pursuant to this section that apply statewide,
23 regionwide, or industrywide, and not to a person, as defined in
24 Section 11405.70 of the Government Code, are not within the
25 meaning of a decision, as defined in Section 11405.50 of the
26 Government Code.

27 SEC. 2. Section 13269 of the Water Code is amended to read:

28 13269. (a) (1) On and after January 1, 2000, the provisions
29 of subdivisions (a) and (c) of Section 13260, subdivision (a) of
30 Section 13263, or subdivision (a) of Section 13264 may be waived
31 by the state board or a regional board as to a specific discharge or
32 type of discharge if the state board or a regional board determines,
33 after any necessary state board or regional board meeting, that the
34 waiver is consistent with any applicable state or regional water
35 quality control plan and is in the public interest. The state board
36 or a regional board shall give notice of any necessary meeting by
37 publication pursuant to Section 11125 of the Government Code.

38 (2) A waiver may not exceed five years in duration, but may be
39 renewed by the state board or a regional board. The waiver shall
40 be conditional and may be terminated at any time by the state board

1 or a regional board. The conditions of the waiver shall include,
2 but need not be limited to, the performance of individual, group,
3 or watershed-based monitoring, except as provided in paragraph
4 (3). Monitoring requirements shall be designed to support the
5 development and implementation of the waiver program, including,
6 but not limited to, verifying the adequacy and effectiveness of the
7 waiver's conditions. In establishing monitoring requirements, the
8 regional board may consider the volume, duration, frequency, and
9 constituents of the discharge; the extent and type of existing
10 monitoring activities, including, but not limited to, existing
11 watershed-based, compliance, and effectiveness monitoring efforts;
12 the size of the project area; and other relevant factors. Monitoring
13 results shall be made available to the public.

14 (3) The state board or a regional board may waive the
15 monitoring requirements described in this subdivision for
16 discharges that it determines do not pose a significant threat to
17 water quality.

18 (4) (A) The state board or a regional board may include as a
19 condition of a waiver the payment of an annual fee established by
20 the state board in accordance with subdivision (f) of Section 13260.

21 (B) Funds generated by the payment of the fee shall be deposited
22 in the Waste Discharge Permit Fund for expenditure, upon
23 appropriation by the Legislature, by the state board or appropriate
24 regional board for the purpose of carrying out activities limited to
25 those necessary to establish and implement the waiver program
26 pursuant to this section. The total amount of annual fees collected
27 pursuant to this section shall not exceed the costs of those activities
28 necessary to establish and implement waivers of waste discharge
29 requirements pursuant to this section.

30 (C) In establishing the amount of a fee that may be imposed on
31 irrigated agriculture operations pursuant to this section, the state
32 board shall consider relevant factors, including, but not limited to,
33 all of the following:

- 34 (i) The size of the operations.
35 (ii) Any compliance costs borne by the operations pursuant to
36 state and federal water quality regulations.
37 (iii) Any costs associated with water quality monitoring
38 performed or funded by the operations.
39 (iv) Participation in a watershed management program approved
40 by the applicable regional board.

~~(D) In establishing the amount of a fee that may be imposed on silviculture operations pursuant to this section, the state board shall consider relevant factors, including, but not limited to, all of the following:~~

~~(i) The size of the operations.~~

~~(ii) Any compliance costs borne by the operations pursuant to state and federal water quality regulations.~~

~~(iii) Any costs associated with water quality monitoring performed or funded by the operations.~~

~~(iv) The average annual number of timber harvest plans proposed by the operations.~~

~~(5) The state board or a regional board shall give notice of the adoption of a waiver by publication within the affected county or counties as set forth in Section 6061 of the Government Code.~~

~~(b) (1) A waiver in effect on January 1, 2000, shall remain valid until January 1, 2003, unless the regional board terminates that waiver prior to that date. All waivers that were valid on January 1, 2000, and granted an extension until January 1, 2003, and not otherwise terminated, may be renewed by a regional board in five-year increments.~~

~~(2) Notwithstanding paragraph (1), a waiver for an onsite sewage treatment system that is in effect on January 1, 2002, shall remain valid until June 30, 2004, unless the regional board terminates the waiver prior to that date. Any waiver for onsite sewage treatment systems adopted or renewed after June 30, 2004, shall be consistent with the applicable regulations or standards for onsite sewage treatment systems adopted or retained in accordance with Section 13291.~~

~~(e) Upon notification of the appropriate regional board of the discharge or proposed discharge, except as provided in subdivision (d), the provisions of subdivisions (a) and (c) of Section 13260, subdivision (a) of Section 13263, and subdivision (a) of Section 13264 do not apply to a discharge resulting from any of the following emergency activities:~~

~~(1) Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing~~

1 with Section 8550) of Division 1 of Title 2 of the Government
2 Code.

3 (2) ~~Emergency projects undertaken, carried out, or approved~~
4 ~~by a public agency to maintain, repair, or restore an existing~~
5 ~~highway, as defined in Section 360 of the Vehicle Code, except~~
6 ~~for a highway designated as an official state scenic highway~~
7 ~~pursuant to Section 262 of the Streets and Highways Code, within~~
8 ~~the existing right-of-way of the highway, damaged as a result of~~
9 ~~fire, flood, storm, earthquake, land subsidence, gradual earth~~
10 ~~movement, or landslide within one year of the damage. This~~
11 ~~paragraph does not exempt from this section any project~~
12 ~~undertaken, carried out, or approved by a public agency to expand~~
13 ~~or widen a highway damaged by fire, flood, storm, earthquake,~~
14 ~~land subsidence, gradual earth movement, or landslide.~~

15 (d) ~~Subdivision (c) is not a limitation of the authority of a~~
16 ~~regional board under subdivision (a) to determine that any~~
17 ~~provision of this division shall not be waived or to establish~~
18 ~~conditions of a waiver. Subdivision (c) shall not apply to the extent~~
19 ~~that it is inconsistent with any waiver or other order or prohibition~~
20 ~~issued under this division.~~

21 (e) ~~The regional boards and the state board shall require~~
22 ~~compliance with the conditions pursuant to which waivers are~~
23 ~~granted under this section.~~

24 (f) ~~Prior to renewing any waiver for a specific type of discharge~~
25 ~~established under this section, the state board or a regional board~~
26 ~~shall review the terms of the waiver policy at a public hearing. At~~
27 ~~the hearing, the state board or a regional board shall determine~~
28 ~~whether the discharge for which the waiver policy was established~~
29 ~~should be subject to general or individual waste discharge~~
30 ~~requirements.~~

31 (g) ~~The issuance, denial, or revocation of a waiver or waste~~
32 ~~discharge requirements pursuant to this section that apply~~
33 ~~statewide, regionwide, or industrywide, and not to a person, as~~
34 ~~defined in Section 11405.70 of the Government Code, are not~~
35 ~~within the meaning of a decision, as defined in Section 11405.50~~
36 ~~of the Government Code.~~

37 SEC. 3. ~~Section 13377 of the Water Code is amended to read:~~

38 13377. ~~(a) Notwithstanding any other provision of this~~
39 ~~division, the state board or the regional boards shall, as required~~
40 ~~or authorized by the Federal Water Pollution Control Act, as~~

1 amended, issue waste discharge requirements and dredged or fill
2 material permits which apply and ensure compliance with all
3 applicable provisions of the act and acts amendatory thereof or
4 supplementary, thereto, together with any more stringent effluent
5 standards or limitations necessary to implement water quality
6 control plans, or for the protection of beneficial uses, or to prevent
7 nuisance.

8 (b) The issuance, denial, or revocation of waste discharge
9 requirements or permits pursuant to this section that apply
10 statewide, regionwide, or industrywide, and not to a person, as
11 defined in Section 11405.70 of the Government Code, are not
12 within the meaning of a decision, as defined in Section 11405.50
13 of the Government Code.